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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,472	03/11/2004	John Shoop	18004/39469A	6099

4743 7590 11/29/2007  
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EXAMINER
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LEFF, STEVEN N

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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11/29/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/798,472	SHOOP ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Steven Leff	1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 July 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4,6-13,17,19 and 23-32 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4, 6-13, 17, 19, and 23-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- Claims 1-4, 10-13, 17, 19, 23, and 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Underwood et al. (WO/0210034) in view of Jon et al. (6143344).

With respect to claims 1-4, 10-13, 17, 19, 23, and 25-32 Underwood et al. teach a liquid composition for application to a food packaging film. (abstract) Specifically with regard to claim 1, Underwood et al. teach a browning agent capable of undergoing a Maillard reaction with meat protein (pg. 15 line 13+) where the composition further contains a viscosity-modifying agent (pg. 14 line 20, pg. 21 line 17+) a coating enhancer (pg. 14 line 20+) and water (pg. 18 line 25+), where the pH is of the composition is about 2 to about 6.5 as Underwood et al. teach the use of HAA. Underwood et al. continue by teaching that the browning agent comprises a pyrolysis product (pg. 11 line 25+), and that the browning agent contains hydroxyacetaldehyde (pg. 2 line 15), and further where the composition is capable of transferring the browning agent of the composition from the food packaging film to a foodstuff packaged in the food packaging film. (pg. 15 line 13+)

Underwood et al. continue by teaching that the browning agent comprises a pyrolysis product from combustion of a sugar, a starch, or a mixture thereof, (pg. 11 line

11+) and further contains aldehydes, and more specifically hydroxyacetaldehyde. (pg. 10 line 20+) In the case that the browning agent comprises a pyrolysis product from CHARSOL ®, Underwood et al. teach that the browning agent may comprise a pyrolysis product from combustion of wood or cellulose, (pg. 11 line 25+) where pyrolysis liquids and dry powder formulations, e.g., liquid smoke compositions and compositions containing hydroxyacetaldehyde (HAA), are useful as a replacement for the browning and flavoring of a foodstuff by direct contact of a foodstuff with smoke produced from burning wood (pg. 2 line 15+). Underwood et al. continue by teaching that the browning agent comprises a pyrolysis product form combustion of a sugar, starch, or mixture thereof (pg. 11 line 8+), and may further comprise a flavoring agent which may comprise a phenol, an acid, or a mixture thereof (pg. 11 line 25+).

It is noted that due to the fact that Underwood et al. teaches that MAILLOSE ® contains between .001% to about 35% and further teaches that the overall composition may contain from .01% to about 35% HAA (pg. 7 line 5+), in the instance where the final composition contains .5% HAA and the HAA content within the MAILLOSE ® is 35%, Underwood et al. teach a final composition which comprises 1.4% of a browning composition. In the instance that the HAA content within the MAILLOSE ® is 1%, Underwood et al. teach a final composition which comprises 50% of a browning composition.

With specific regard to the percentage of browning agent within the overall composition and the pH range recited in claims 1, and 28, although Underwood et al. does not teach the specific pH value, Underwood et al. does teach the specific components of the composition with respect to claim 1, where one of the components is HAA, which is an acid. Therefore it would be expected that the composition of Underwood et al. would have a pH in the range of about 2 to about 6.5 minus any clear and convincing arguments to the contrary.

However Underwood et al. is silent with respect to the specific weight percentages within a single overall composition, that the viscosity-modifying agent specifically comprises a water-soluble cellulose ether, or the specific use of a polyol.

Jon et al. teach “self-coloring casings by providing a transferable, uniformly coloring composition and a machine peel able casing coated therewith. The inventive casing has a colorant coating which has preferential substantivity to a proteinaceous and

fat containing foodstuff such as meat, cheese or processed beans." (col. 8 line 10+) The coloring composition includes a browning agent, a viscosity-modifying agent, a surfactant, a salt, and water.

Specifically, Jon et al. teach a composition comprising about 20% to about 47%, by weight, of a browning agent, (col. 29 line 63+) about 0.05% to about 2%, by weight, of a viscosity-modifying agent, (col. 3 line 9) 0% to about 10%, by weight, of a surfactant, a polyol, or mixture thereof, (col. 21 line 54+) 0% to about 3%, by weight, of a pharmaceutically acceptable salt, and water (col. 13 line 20+). Specifically regarding claims 17, Jon et al. teach that the composition comprises a viscosity-modifying agent, specifically hydroxypropylcellulose (abstract), and with regard to claim 23 the polyol is glycerol (col. 11 line 56+).

Therefore although Underwood et al. does not teach the specific weight percentages within the overall composition with respect to the percentage of browning agent, viscosity agent, and the surfactant, Underwood et al. does teach the general concept of using these components within the overall composition for their art recognized and applicants intended function of providing a composition which is capable of transferring a browning agent to a packaged food. In addition Underwood et al. does teach a range with respect to the amount of HAA within the composition.

Therefore, one of ordinary skill in the art would have been motivated to combine the teachings of Underwood et al. and Jon et al. and teach a specific composition with specific components since Jon et al. teach an acidic browning composition comprising a water soluble ether (abstract), as well as polyol (col. 11 line 56+), where Underwood et al. specifically teaches the use of corn oil, or other liquid which provides a more uniform and consistent surface covering, and where Jon et al. positively recite the claimed weight percentages albeit in a very broad manner (examples 3-8) in addition to teaching the specific viscosity modifying agent as well as the specific use of the specific polyol (col. 21 line 54+)

Therefore , it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to teach a liquid composition for applying to food packaging film which included specific weight percents as well as specific polyols and/or viscosity-modifying agents, in order to ensure that an even distribution of the coating composition on the casing surface occurs thereby resulting in sufficient and desired

browning of the specific meat product as is taught by Jon et al. (col. 17 line 49+), where a polyol is known to include sugar thereby further enhancing the flavor of the meat product, and where MPEP 2144.07 states that the selection of a known viscosity-modifying agents based on its suitability for its intended use supports a *prima facie* obviousness determination.

In addition MPEP 2144.05 (II) (A) states that when the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, where MPEP 2144.05 (II) (A) continues by stating that the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages. With regard to the specific choose of the polyols and/or viscosity-modifying agents, MPEP 2144

Further although Underwood et al. do not teach that the heating is performed within four hours of the stuffing step, Underwood et al. does teach the general composition of claim 1 with respect to applying a liquid composition to a food packaging film (page 14 line 16) as is taught in claim 30, as well as heating the package containing the food for its art recognized and applicants intended function of providing a composition which is capable of transferring a browning agent to a packaged food which is necessitated by heating (page 15 line 13+) where it would have been obvious to one of ordinary skill in the art to teach processing within a specific time period in order to fix the coating to the film as is taught by Jon et al. (col. 31 line 57+) thus reducing "rub off" (col. 31 line 59+).

Therefore with respect to claims 1-4, 10-13, 17, 19, 23, and 25-32 it would have been obvious to one of ordinary skill in the art at the time of the invention by applicant to have produced a liquid composition which contained specific weight percents as well as types of the specific components, in order to provide a composition which ensures an even distribution of the coating composition on the casing surface thereby resulting in sufficient and desired browning of the specific meat product, as well as to reduce relative added costs, with respect to a specific food item since the specific browning composition is dependant upon among other things, the specific size of the meat, the amount of browning composition, and the amount of the browning composition which is applied to the packaging as it taught by Jon et al. (col. 13 line 66), in order to produce a specific

tasting food item which is produced due to the specific parameters with regards to the preparation, coating and heating of the liquid composition.

### **Response to Arguments**

With respect to applicant's argument that Underwood et al. fails to teach or disclose the specific agents and specific amounts of the specific agents as taught by the claims, or heating within a specific time frame, it is noted that the examiner acknowledged this fact by providing obviousness rejections, as opposed to an anticipation rejections.

With respect to applicant's argument that Underwood et al. fails to teach or disclose the specific viscosity modifying agents and specific amounts of the viscosity modifying agents as a liquid, applicant is urged to page 11 line 33+, which teaches the inclusion of thickeners i.e. viscosity modifying agents, and page 11 line 9 which teaches a liquid browning composition. In addition, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. specific viscosity modifying agents) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding applicant's argument that Underwood et al. does not include a polyol in the composition, applicant is urged to page 14, line 20 which teaches corn oil for its art recognized and applicant's intended purpose of providing an agent which is specifically successful at applying an even coating of the specific agents and specific amounts of the specific agents to the surface thereof due to the chemical properties of the corn oil, where a polyol has the added advantage that it is sugar based, thereby further adding flavoring in addition to providing a composition which would provide even brown color to the treated meat product since the composition has thus been evenly applied due to the packaging.

Regarding applicant's argument with regard to claims 31 and 32 it is noted that the features upon which applicant relies (i.e. that the food is in contact with the packaging) is not recited in the rejected claim(s). Although the claims are interpreted in

light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that Underwood et al. and Jon et al. are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Underwood et al. and Jon et al. are directed to browning sausage products where Jon et al. is relied upon to teach it would have been obvious to teach the specifics with regard to the specific agents and specific amounts of the specific agents as taught by the claims, since both Underwood et al. and Jon et al. are directed to flavoring and browning compositions of packaged sausages, where it is further noted that Jon et al. teach in the abstract a water soluble film forming agent.

Applicant further states that Jon et al. teach the importance of a salt on page 12 col. 14 line 18 of the response, however is further noted that the addition of the salt by Jon et al. is optional, as stated on page 12 col. 14 line 4 to "enhance" the color transfer.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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*Drew Becker*  
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